

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE RUDY KIRK,)	No. C 06-0071 CW (PR)
)	
Petitioner,)	ORDER DENYING CERTIFICATE OF
)	APPEALABILITY
v.)	
)	(Docket no. 43)
MELVIN HUNTER,)	
)	
Respondent.)	
_____)	

Petitioner Lawrence Rudy Kirk, proceeding pro se, filed a petition for a writ of habeas corpus pursuant to title 28 U.S.C. § 2254. On November 21, 2008, the Court entered judgment denying the petition.

On March 18, 2010, the Court denied Petitioner's request for leave to file a motion for reconsideration under Rule 60(b)(6) of the Federal Rules of Civil Procedure.

On April 19, 2010, Petitioner filed a notice of appeal and a motion for a certificate of appealability (COA).

For the reasons below, the Court DENIES a COA.

DISCUSSION

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding unless the petitioner first obtains a COA. A judge shall grant a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the

1 petitioner must demonstrate that reasonable jurists would find the
2 district court's assessment of the constitutional claims debatable
3 or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). This
4 requires an overview of the claims in the habeas petition and a
5 general assessment of their merits. It does not require full
6 consideration of the factual or legal bases adduced in support of
7 the claims. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). The
8 question is the debatability of the underlying constitutional
9 claim, not the resolution of that debate. Id. at 342.

10 The Court has reviewed its order denying the petition for a
11 writ of habeas corpus as well as its order denying Petitioner's
12 request for leave to file a motion for reconsideration under Rule
13 60(b)(6). Petitioner has failed to make a substantial showing that
14 any of his claims amounted to a denial of his constitutional rights
15 or demonstrate that a reasonable jurist would disagree with this
16 Court's assessment. Therefore, the Court DENIES Petitioner a COA.

17 This Order terminates Docket no. 43.

18 IT IS SO ORDERED.

19 DATED: 9/1/2010



20 CLAUDIA WILKEN
21 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE RUDY KIRK,

Plaintiff,

v.

MELVIN HUNTER et al,

Defendant.

Case Number: CV06-00071 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 1, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lawrence Rudy Kirk CO#000166-9
Coalinga State Hospital
P.O. Box 5003
Unit 6
Coalinga, CA 93201

Dated: September 1, 2010

Richard W. Wiekling, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California